

**IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE MIDDLE DISTRICT OF
ALABAMA, EASTERN DIVISION**

GENE COGGINS Pro st
1436 COUNTY ROAD #299
LANETT, AL 36863
Plaintiff

3:07CV402

V:

CASE No. ~~CE-07-121~~

TOWN OF JACKSON'S GAP
Defendant

MOTION TO APPEAL AND COUNTER CLAIM

COMES NOW THE PLAINTIFF, GENE COGGINS WITH THIS MOTION TO
APPEAL AND COUNTER CLAIM. WHEN A RULE OF LAW IS COVERED BY THE
GUARANTEED DUE PROCESS OF LAW, AS GIVEN IN THE CONSTITUTION OF THE
UNITED STATES, GIVES EVERY CITIZEN, (INCLUDING ME), THAT HAS BEEN
DENIED ANY PART OF THIS PROCESS, HAS THE RIGHT TO FILE HIS COMPLAINT IN
FEDERAL COURT, THE RIGHT FOR EVERY CITIZEN TO BE HEARD AND HAVE
THEIR DAY IN COURT, AND THE RIGHT FOR APPEAL, WITH THIS CONCEPT OF
"THE DUE PROCESS OF LAW" IS EMBEDDED IN THE FIFTH AMENDMENT OF THE
CONSTITUTION OF THE UNITED STATES, AND HAS PRESTIGE OVER ANY OTHER
RULE OF LAW, LIKE THE ONE THIS COURT CONSTANTLY USES AS FOUND IN 28 U.

S. C. s/s 1915 (e) (2) (b), IMPROPER AND ILLEGALLY USED.

GROUND:

1. GUARANTEED CONSTITUTION RIGHT VIOLATIONS, WHERE THE TOWN OF JACKSON'S GAP FAILED TO PROTECT PRIVATE CITIZENS FROM ILLEGAL BREAKING IN STEALING, AND DAMAGING PRIVATE PROPERTY. THEIR NEGLIGENCE PLACED THE PROTECTION UPON THE OWNER. THE CONSTITUTION OF THE UNITED STATES GIVES EVERY CITIZEN THE RIGHT TO BEAR ARMS AND USE RESTRAINED FORCE WHEN NECESSARY.
2. A SECOND GUARANTEED CONSTITUTION VIOLATION CAME ABOUT WHEN THE JACKSON'S GAP POLICE HAD THE TALLAPOOSA COUNTY SHERIFF TO PLACE ME IN JAIL WITHOUT AN INDICTMENT BY A GRAND JURY. 9 Edmunds Cyclopedia of Federal Procedures 3919.. LOCKED ME UP BEFORE I WAS SERVED WITH A WARRANT, FOR TWELVE HOURS. WHILE I WAS IN JAIL THE POLICE OFFICE CAME IN AND MADE OUT THE WARRANT.
3. ANOTHER CIVIL RIGHT VIOLATION, CAME ABOUT WHEN I WAS CHARGED WITH DOMESTIC VIOLENCE, WHICH LATER FOUND NOT GUILTY, BECAUSE THE PLAINTIFF AND THE DEFENDANT DID NOT LIVE IN THE SAME DWELLING. THIS ILLEGAL CHARGES CREATED A LOT OF PROBLEMS.
4. THESE RIGHTS AS GIVEN IN THE GUARANTEED DUE PROCESS OF LAW HAVE BEEN PLACED IN THE CONSTITUTION OF THE UNITED STATES THAT NO COURT, JUDGE OR ANY FORM THERE OF CAN LEGAL CHANGE OR DENY, WITHOUT PLACING THEM SELF IN THE POSITION OF BREAKING THE OATH OF

OFFICE THEY TOOK THAT LEADS TO A FELONY AND PERJURY CONVICTION.

4. THE SECOND CHARGE WAS FOR MENACING,(WHICH IS A MISDEMEANOR, UNDER THE ALABAMA CRIMINAL CODE s/s 13A - 5 -12), CARRIES A SENTENCE TO PAY A FINE FOR THIS VIOLATION SHALL BE FOR A DEFINATE AMOUNT, FIXED BY THE COURT, NOT TO EXCEED \$200.00, AS TO SENTENCE AND PUNISHMENT SEE s/s 15 - 18 - 1 et Seq. AS TO REPARATION, RESTITUTION, OR PAYMENT OF FINES, OR COURT COST AS CONDITIONS OF PROBATION. Rule 10, Al. R. Cr. P. s/s 15 - 22- 52.. THEREFORE, UNDER THE ALABAMA CRIMINALL CODE A CLASS C. MISDEMEANOR DOES NOT CARRY ANY TIME IN JAIL, MAKING THIS ARREST, ILLEGAL FROM THE BEGINNING..

5. A CONFLICT OF INTEREST CAME ABOUT WHEN THE JUDGE TOM YOUNG FAILED TO EXCUSE HIM SELF, FROM ISSUING AN ORDER DATED DECEMBER 04, 2007, MAKES ALL OF IT ILLEGAL, BECAUSE HE IS INVOLVED WITH A CIVIL RIGHTS LAW SUIT I HAVE AGAINST HIM IN THE COURT OF APPEALS, AND IF NOT SETTLED THERE THIS WILL END UP IN THE UNITED STATES SUPREME COURT.

- A. WHEN I FILED FOR AN APPEAL TO THE CIRCUIT COURT OF TALLAPOOSA COUNTY FOR A JURY TRIAL, I NEVER KNEW THAT MY SON WOULD BE INVOLVED IN A CAR WRECK, AND THAT I WOULD HAVE TO GO TO THE BAPTIST HOSPITAL AT MONTGOMERY, ALABAMA EVERY DAY.
- B. I FILED A CONTINUANCE AND SENT TO THE OFFICE OF THE CLERK ON THE DAY OF THE ACCIDENT, DUE TO MEDICAL EMERGENCY AND ON THE ORDER DATED DECEMBER 04, 2007, THIS WAS NOT EVEN PRESENTED. THE WAY THIS CASE HAS BEEN HANDLED PROVES THIS, WHERE ON THE
- C. MY GUARANTEED CONSTITUTION RIGHTS FOR THE DUE PROCESS OF LAW WERE AGAIN VIOLATED BY NOT ALLOWING A TRIAL BY JURY. THE 6th AMENDMENT OF THE UNITED STATES CONSTITUTION REQUIRES A TRIAL BY JURY EITHER CIVIL OR CRIMINAL AND BE **PLACED ON THE SHORT TERM CALENDER, WHETHER THEY BE ISSUES OF LAW OR FACTS, BEFORE A COURT THAT HAS PROPER JURISDICTION..** Fed. R. Civil P. 38 (a), 48, 59. Crim. P. 23, 33.

- D. **THE ALLOWANCE OF AN APPEAL FROM A LOWER COURT IS A GUARANTEED CONSTITUTION RIGHT, WHERE A LOWER COURT REFUSES TO MODIFY AN INJUNCTION OR DISSOLVE ALL ISSUES IN DETERMINING THE RIGHT AND LIABILITIES OF THE PARTIES INVOLVED, IS IMMEDIATELY APPEALABLE.**
Budinich V: Becton, Dickinson & Co. 486, U. S. 196, 201, 108, S. Ct. 1717-22, 100 L. Ed. 2d, 178, (1988). LaChance V: Duffy's Draft House, Inc. 146 F. 3d, 832, 837, (11th Cir. 1998), Fed. R. 56.
- E. WHEN I FILED AN APPEAL TO THE COURT OF CRIMINAL APPEALS FOR THE STATE OF ALABAMA IN MONTGOMERY, THIS WAS ALSO DENIED. IN ITEM- D. ABOVE THE ABOVE LAW DOES NOT EXIST IN THIS COURT EITHER.. THIS REPLY SHOWS THAT THE COURT OF CRIMINAL APPEALS HAS NO RESPECT FOR INDIVIDUALS GUARANTEED CONSTITUTION RIGHTS AS FOUND IN THE DUE PROCESS OF LAW.

I, HAVE PLACED ALL COMPLAINTS, APPEALS, AND SUMMONS IN THE UNITED STATES MAIL, SENT CERTIFIED WITH RECEIPT, RETURNED TO CLERK OF THE COURT, AS GIVEN IN THE FEDERAL RULES OF LAW 3, 4, 5, CIVIL PROCEDURES AS A PART OF THE DUE PROCESS OF LAW AS A GUARANTEED CONSTITUTIONAL RIGHT.

THIS COURT HAS TRIED TO STOP EVERY APPEAL WITH THE ORDERS OF FREVOLOUS APPEAL, DENIED AS MOOT, WITHOUT ARGUABLE MERITS, THIS IS WHY I FILED A MOTION FOR THE USE OF THE APPENDIX SYSTEM, BECAUSE GUARANTEED CONSTITUTION RIGHTS ARE NON ARGUABLE, BUT ARE SET UP BY THE DUE PROCESS OF LAW UNDER THE CONSTITUTION TO BE PRESENTED IN THE FEDERAL COURT SYSTEM. WHERE YOU HAVE STATED THAT "FAILS TO STATE A CLAIM", A GUARANTEED CONSTITUTION RIGHT IS NOT A JOKE, BUT GIVEN TO ALL CITIZENS BY THE UNITED STATES GOVERNMENT. THE STATUES PROVIDE THAT THIS CANNOT BE USED TO PREVENT A CASE FROM BEING HEARD IN ANY COURT. "SEEKS MONETARY RELIEF AGAINST A DEFENDANT WHO IS IMMUNE FROM SUCH RELIEF 28 U. S. C. s/s 1915 (e)(2)(b)..THIS IS NOT THE

PREVAILING LAW, GOVERNING LAW SUITS,. LOOK IN THE CONSTITUTION OF THE UNITED STATES AT THE 11TH AMENDMENT, WHERE EVERY CITIZEN CAN SUE OR BE SUED BY ANY CITIZEN OF THE SAME STATE, WITH NO IMMUNITY GIVEN FOR ANY ONE, FOR THIS IS THE PREVAILING AND DOMINATE LAW THAT OVER RIDES ALL OTHER.. “PLAINTIFF COMPLAINT FAILS TO STATE A SUBSTANTIVE DUE PROCESS CLAIM UPON WHICH RELIEF MAY BE GRANTED”, . A CONSTITUTION RIGHT VIOLATION THAT CAN ONLY PLACE THIS CASE IN THE FEDERAL COURT SYSTEM..

CONCLUSION;

THE ESTABLISHED DUE PROCESS OF LAW AS GUARANTEED BY THE UNITED STATES CONSTITUTION HAS BEEN NON- EXISTING HERE IN PRIOR CASES.. THESE LAWS FORBID CONDEMNATION WITHOUT A HEARING, WHERE EVERY CITIZEN HAS THE RIGHT TO BE HEARD IN ANY COURT. Pettit V.: Penn. La, App. 180, So. 2d, 66, 69. WITH BOTH SIDES BEING REPRESENTED THERE, WITHOUT ANY PRE-JUDGING ON ANY CASE. WHERE BIAS AND FORE JUDGMENT, PRECONCEIVE OPINIONS ARE LEANING TOWARD ONE SIDE OF A CAUSE ,FOR SOME REASONS OTHER THAN CONVICTION OF EQUAL JUSTICE. THAT WHICH DISQUALIFIES JUDGES (LIKE THE ONES INVOLVED IN MY CASES), IS CONVICTION STATE OF MIND, WHICH SWAYS JUDGMENT AND RENDERS JUDGES UNABLE TO EXERCISE HIS FUNCTIONS IMPARTIALLY IN ANY PARTICULAR CASE. IT REFERS TO MENTAL ATTITUDE OR DISPOSITION OF THE JUDGE TOWARD A PARTY TO THE LITIGATION AND NOT TO ANY VIEWS THAT HE MAY ENTERTAIN REGARDING THE SUBJECT MATTER

INVOLVED. State ex rel Mitchell V: Sage Store Co. 157 Kan. 622, 143, P. 2d, 652, 655..
THESE ERRORS SUBSTANTIALLY EFFECT APPELLANT'S LEGAL RIGHTS AND
OBLIGATIONS. Erskine V: Upham 56 Cal. App. 2d, 235, 132, P. 2d, 219, 228; Trepanier V:
Standard Min & Mill Co. 56 Wyo. 29, 123, P.2d, 378, 380. SUCH ACTIONS MAY BE
GROUNDS FOR NEW TRIAL AND REVERSAL OF JUDGMENT. THIS APPLIES TO
EVERY CASE THAT I HAVE PRESENTED IN THIS COURT. Fed. R. Civil P. 59
A PREJUDICIAL ERROR IS ONE WHICH AFFECTS THE FINAL RESULTS OF THE
TRIAL. State V: Gilcrist, 15 Wash. App. 892, 552, P. 2d, 690, 693.. Sheppard V: Maxwell
384, U. S. 333, 86, S. Ct. 1507, 16, L. E. D. 2d, 600. .. THIS CASE IS NOT A PART OF ANY OTHER
SUIT FILED AGAINST JACKSON'S GAP, AND MUST BE HANDLED AS SUCH. WHERE A
LOWER COURT FAILS OR REFUSES TO DISSOLVE ALL ISSUES INVOLVED IN THIS CASE
THEN THE RIGHT FOR IMMEDIATELY APPEAL MUST BE GRANTED WITH THE COUNTER
CLAIM AND JUDGMENT AS REQUIRED.


GENE COGGINS

CERTIFICATE OF SERVICE

I, GENE COGGINS, HEREBY CERTIFY THAT I HAVE PLACED IN
THE UNITED STATES MAIL A COPY OF THIS FOREGOING ACTION, TO
ALL INVOLVED IN THIS CASE, TO THE LAST KNOWN ADDRESS, WITH
PROPER POSTAGE, AND SENT UPON THIS DAY;

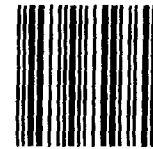
Gene Coggins
GENE COGGINS

DECEMBER 21, 2007
DATE

GENE COGGINS
1436 COUNTY RD. #299
LANETT, AL 36863



0000



36101

U.S. POSTAGE
PAID
LANETT, AL
36863
DEC 21, 07
AMOUNT
\$0.58
00098366-03

OFFICE OF THE CLERK
U.S. DISTRICT COURT
P.O. BOX 711
MONTGOMERY, AL 36101-0711

36101+0711-11 5007

